

IN THE UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF ARKANSAS
HARRISON DIVISION

DUANE TOLLIVER, et al.

PLAINTIFF

VS.

CASE NO. 05-3036

BAXTER COUNTY, ARKANSAS, et al.

DEFENDANTS

ORDER

Now on this 9th day of March, 2006, comes on for consideration the **Motion to Dismiss Unserved Defendants (doc. 57)** filed herein by the County Defendants. The Court, being well and sufficiently advised, finds and orders as follows with respect thereto:

1. Plaintiffs filed their complaint in this matter on February 11, 2005; and, an Amended Complaint was filed on February 14, 2005.

2. In addition to others, plaintiffs named as defendants Todd Beaver, Ken Grayam and James Scott.

3. Neither Beaver, Grayam nor Scott have been served pursuant to Rule 4 of the Federal Rules of Civil Procedure.

4. The Clerk of this Court issued First Notices on September 20, 2005, and October 6, 2005, noting that no answer or other responsive pleading had been filed on behalf of Beaver, Grayam or Scott, and that there had not been filed any proof of service upon any of the three. The said notices warned that if service upon the three were not perfected within 120 days after the filing of the complaint, a show cause order would issue and the complaint would be subject to dismissal as to these three unserved defendants.

5. On October 28, 2005, the Clerk of the Court issued Second Notices advising that no answer or other responsive pleading had been filed for Beaver, Grayam or Scott and that no proof of service had been

filed as to any of the three. The Second Notices further directed plaintiffs to file, within 11 days thereafter, either a proof of proper service or a statement declaring why process had not be served and/or when it was expected to be served.

6. Movants declare that plaintiffs have failed to respond to any of the Clerk's Notices; that Beaver, Grayam and Scott were not served within 120 days from the date the complaint was filed; that they have never been served; and that, therefore, plaintiffs' complaint against these defendants should be dismissed.

7. Movants declare that plaintiffs were noticed electronically of the filing of the Motion under discussion on February 14, 2006. There has been no response to the Motion by plaintiffs.

8. Accordingly, the Court finds that the **Motion to Dismiss Unserved Defendants (doc. 57)** should be, and it hereby is, **granted** and that plaintiffs' complaint should be, and hereby is, **dismissed** with respect to separate defendants Todd Beaver, Ken Grayam, and James Scott.

IT IS SO ORDERED.

/s/JIMM LARRY HENDREN
JIMM LARRY HENDREN
UNITED STATES DISTRICT JUDGE